

Tuesday, 3 July, 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
CONFERENCE ROOM OF THE TRIBUNAL
Room 217
War Ministry Building
Tokyo, Japan.

(9:00 A.M.)

UNITED STATES OF AMERICA AND ORS

Prosecutors

-against-

ARAKI, Sadao AND ORS.

Defendants.

APPLICATION UNDER RULE 6 b (1) OF THE RULES
OF PROCEDURE OF THE INTERNATIONAL MILITARY
TRIBUNAL FOR THE FAR EAST

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Before:

HON. SIR WILLIAM WEBB, President
of the Tribunal and Member from
the Commonwealth of Australia.

Reported by:
John J. Smith

Appearances:

For the Prosecution Section:

MR. JUSTICE A. J. MANSFIELD, Associate
Counsel, acting on behalf of the
Commonwealth of Australia;

MR. VALENTINE C. HANMICK

MR. REGINALD S. DAVIES

For the Defense Section:

MR. FLOYD J. MATTICE

MR. W. J. MCCORMACK

MR. WILLIAM LOGAN, JR.

MR. MICHAEL LEVIN

MR. OWEN CUNNINGHAM.

For the Office of the General Secretary, IITFE:

EDWARD H. DELL, Judge
Legal Adviser to the Secretariat

MR. G. WALTER BOWMAN,
Clerk of the Court

For the Language Section:

ENSIGN DAVID F. HORNSTEIN, Chief.

THE PRESIDENT: This is an application for an order dispensing with compliance of Rule 6 b (1) with respect to the document "The Way of a Subject," being a book.

MR. HAMMACK: This is a book consisting of 100 pages which was issued, introduced in evidence, and which book was issued by the Ministry of Education in March, 1941, for distribution to teachers and students in the Japanese schools and for general distribution to the Japanese public. I introduced the only copy in existence. It was introduced as Exhibit No. 141, and I read approximately three-fourths of the excerpts. It is desired to read into evidence certain excerpts from this book, copies of which have been given to the defense. They have not received copies of the book itself. At this stage, I will request that the book be placed in evidence, and that it be made available to counsel, as we will not be likely to be able to supply them with the book in Japanese.

If this application is granted, there will be no hardship inflicted upon the defendants. The book will be available to them at any time for the purpose of cross-examination. The only information that we have is that it was issued by the Ministry of Education, and that he had ordered it destroyed.

I feel that it is a reasonable and equitable request, and that it will be, if granted, of material

assistance, if the Rule be waived in this case.

THE PRESIDENT: What has the defense to say?

MR. MATTICE: If the President please, we should have every opportunity of seeing these documents. We are placed at a great disadvantage. We do not know what is in this material. As is always the case in all such matters. They have something which is apparently in form, but we should have the right, at least, to inspect it. We have had no opportunity of seeing it.

We feel that it is unfair and prejudicial to the rights of the accused persons. We realize the difficulties, but we are under many difficulties.

MR. HAMMACK: What is the difficulty in this matter?

MR. MATTICE: Every part of it, down to and including translation.

THE PRESIDENT: You said you had no opportunity to inspect the excerpts, but you have, The book is in evidence.

MR. MATTICE: I cannot read a book that is in Japanese.

MR. HAMMACK: Sir, it can be read in five minutes.

MR. MATTICE: I myself cannot read it. I have to procure the services of an interpreter. There is not time for that. We are in court five days a

week. We now do not have the time. This is a serious matter. We do not have time to do our office work, which all lawyers have to do in preparing their side of the case. I myself have been attending to these matters every day in the week, including Sundays, I have spent 12, 13 and 14 hours a day, and I have not scratched the surface. That is an example of what we are doing. We have not the time to spend on an examination of these documents. How can we find time to get the interpreters to go over these documents and this book, and other documents? We just cannot do it. That is the situation.

MR. HAMMACK: The book is in evidence, and it can be withdrawn at any time, and turned over to a Japanese translator, and that can be done right now.

THE PRESIDENT: I have to remember this trial is conducted in Tokyo, and each of the accused has a Japanese counsel.

MR. MATTICE: One other suggestion, if the President please. This trial is supposed to be conducted in both languages. Now, to meet that standard, I do not see how we can do it.

THE PRESIDENT: Our intentions are to be fair. It is unfortunate that the defendants do not speak English, but everything is translated into their own language. They have a limited amount of translators.

in evidence. It is convenient to counsel to utilize it. We put in our evidence, and expect the defense to put in theirs. Wherever we can, we put it all in.

THE PRESIDENT: These provisions are in the Charter, and they do more for the defendants here than any other nationality does for them, but I think we must observe the Charter.

MR. MATTICE: In that respect, if the President please, it is doubtful if time will be saved by this procedure. When we come to our case, and seek to put in other portions of these books and documents, no time will be saved by this procedure. We will put in everything we think proper and that we are permitted to put in. We do not now know what a hardship that will be.

THE PRESIDENT: How many pages are in the document?

MR. HAMMACK: It has 100 pages.

THE PRESIDENT: You might make an attempt to translate it.

MR. HAMMACK: After all, we are selecting certain portions for the prosecution's case, certain excerpts of the book.

THE PRESIDENT: That is not within the Charter.

MR. HAMMACK: It is not within the Charter, no, sir. I submit, if the President please, that it

is a hardship on the prosecution if we cannot use the excerpts.

THE PRESIDENT: I am concerned with the Charter only in so far as the interests of justice require, but the Japanese are entitled to no greater measure of justice than our own men are entitled to. That obviously is so.

MR. HAMMACK: Yes, sir.

MR. HATTICE: It is much more difficult on these defendants. We have no facilities. We have only twenty translators. We have not sufficient clerks or law clerks.

MR. HAMMACK: The defense have no greater burden than we. They can examine the book. It could be withdrawn from the Secretary's office and taken to a Japanese interpreter, or the Japanese lawyers, so that it would be ready for them when needed. That is all. It is a simple task. The Japanese lawyers could interpret these excerpts in a short time. It is a simple matter. They know what they want, and they know what they have to develop.

THE PRESIDENT: If each of the twenty-six Japanese counsel took out four pages, it could be taken care of. I will make the order, as prayed.

MR. HAMMACK: Thank you, your Honor.

(This portion of the hearing was concluded

at 9:05 A. M.)

THE PRESIDENT: There is a second application.

MR. JUSTICE MANSFIELD: This is an application for an order dispensing with compliance with Rule 6 b (1) of the Rules of Procedure.

The application is in respect to affidavits and signed statements and reports of persons who were prisoners of war in the hands of the Japanese, civilian internees, inhabitants of territories occupied by the Japanese forces, and official reports of investigating officers, and number approximately 650. Some of the said affidavits, statements and reports contain as many as 100 pages, while others are comparatively short. Excerpts have been made from the said documents so as to eliminate matter which is not pertinent to the matters in issue before the Tribunal and also to eliminate the unnecessary repetition of matters, proof of which is contained in other evidentiary material. The complete affidavit in each case will be produced and filed with the Secretariat of the Tribunal so that it may be available by the defense. They deal with different items and different areas. For example, the Australian prisoners of war were first of all taken to Changi Prison Camp at Singapore. Every affidavit taken and which will be used deals with conditions at Changi.

It is not necessary, in connection with conditions existing in China, to have 650 affidavits dealing with the China situation received in evidence in

order to bring before the Tribunal the China matter. There are many documents, but the complete affidavit, of course, will be filed with the Tribunal. In addition, the affidavits contain matters which are not pertinent to questions before this Tribunal.

Many thousands of prisoners were transported by rail, and each affidavit contains an account of the rail transportation, but I will not go into that now.

In addition, many others were transported by sea to Japan, and each affidavit deals with the transportation.

A number of those affidavits are being used. The defendants will not be deprived of the opportunity of seeing these documents, as the affidavits will be with the Secretariat and will be available for their perusal.

The translation and copying of these excerpts and documents was commenced in February of this year, and the first rule of Court was not passed until April 25th last. Then the rule was amended on the 20th of May. There were four months, therefore, in which these affidavits were being prepared and were being translated, the object being, of course, that they could be ready in time. It has been difficult to get the services of translators, and the copying facilities are not of the best.

I think that practically all the persons and documents referred to are not in Japan, and the prosecution does not intend to produce them before the Tribunal. The defense will have the opportunity of reading and seeing these documents, and hearing the affidavits read, and will be able to inspect them and examine them, and avail themselves of their use.

In some cases, there is a considerable amount of reports of senior officers relative to prisoners of war. Some of the many pages cover a number of matters, and are more or less in detail, and the prosecution submits it is not necessary to produce them in full before the Tribunal. All the copying has been completed.

Assuming that there are 650 documents, and if 100 copies have to be made, if there was only one page to each, that will be 65,000 pages. That is a vast amount of material, and it will be very cumbersome.

In any event, I submit the affidavits will not in any way prejudice the defendants, and it is essential in this case that a strict compliance of the rules is not necessary.

MR. McCORMACK: On behalf of my client, and on behalf of the defense, I would state that, with regard to this particular application, we request that it be made in open court.

THE PRESIDENT: I will adjourn it to court. I do think it is a very important matter.

MR. JUSTICE MANSFIELD: It is unfortunate that it was not suggested before I spoke.

MR. McCORMACK: I did not want to interrupt you.

THE PRESIDENT: I will be happy to let my colleagues hear it and pass upon it.

(Hearing was concluded at 9:15 A.M.)
